IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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NATHAN GILLIS,

Plaintiff,

v.

ANTHONY A. ASHWORTH,

Defendant.

OPINION AND ORDER

11-cv-560-bbc

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In this civil action, plaintiff Nathan Gillis contends that defendant Anthony A. Ashworth violated his rights by prohibiting him from transferring money from his prison trust account to his mother. (Originally, plaintiff sued a number of individuals; only Ashworth remains a defendant.) Specifically, plaintiff alleges that defendant denied his May 17, 2011 disbursement request in retaliation for plaintiff's filing of a lawsuit against defendant. Presently before the court are two motions: (1) defendant's motion for summary judgment, dkt. #47; and (2) plaintiff's motion for a preliminary injunction against Brian Graff and William Pollard, neither of whom is a party to this lawsuit. Dkt. #63 . After considering the parties' submissions and the relevant law, I will grant defendant's motion for summary judgment. I will also deny plaintiff's motion for preliminary injunction because the issue is moot and the motion does not relate to any claims at issue in this lawsuit against defendant Ashworth.

As an initial matter, plaintiff failed to follow this court's summary judgment procedures. Plaintiff did not provide citations to admissible evidence in the record to support either his proposed findings of fact, dkt. #58, or his response to defendant's proposed findings of fact, dkt. #57. Plaintiff also stated that he disputes several of defendant's proposed findings of fact, but failed to provide a response or explain why there is a dispute. Dkt. #57. Moreover, plaintiff's proposed findings of fact contained two questions in addition to his one factual statement. Dkt. #58. The court instructed plaintiff during the preliminary pretrial conference that under the court's summary judgment procedures, "[a]ll facts necessary to sustain a party's position on a motion for summary judgment must be explicitly proposed as findings of fact." Dkt. #33, at 13. The court also warned plaintiff that "[a] fact properly proposed by one side will be accepted by the court as undisputed unless the other side properly responds to the proposed fact and establishes that it is in dispute." Id. Because plaintiff failed to properly dispute any of defendant's proposed findings of fact, defendant's facts will be accepted as true. The court will also accept plaintiff's one proposed finding of fact that is a factual statement, although plaintiff did not provide citation to admissible evidence, because that statement is also supported by evidence located in the documents plaintiff attached to his brief in opposition to defendant's motion for summary judgment and defendant previously admitted this fact. Dkt. #55, Ex. 9, at 2-3. (Plaintiff attached eleven documents to his brief in opposition to defendant's motion to dismiss. The only relevant documents comprise defendant's responses to prior requests by plaintiff for admissions and interrogatories, as well as defendant's January 25,

2012 response to plaintiff's original proposed findings of fact.)

From the parties' submissions, I find the following facts to be material and undisputed.

MOTION FOR SUMMARY JUDGMENT

A. Undisputed Facts

Plaintiff Nathan Gillis is a prisoner at the Waupun Correctional Institution. During the events relevant to this case, he was an inmate at the Columbia Correctional Institution, located in Portage, Wisconsin. Defendant Anthony Ashworth is a corrections unit supervisor at the Columbia Correctional Institution. In May 2011, defendant was plaintiff's unit supervisor. (In defendant's proposed findings of fact, he lists his position as "unit supervisor," he refers to himself in his brief as a "unit manager." Dkt. #48, at 1, 4. Plaintiff describes defendant as his "unit manager supervisor." Dkt. #1, ¶ 11. The parties do not explain how a "unit supervisor" is different from a "unit manager," if it is, but neither side appears to contest this issue. For purposes of this motion, I will assume defendant had the authority of a unit manager.)

On May 17, 2011 plaintiff submitted a disbursement request for $300 to be sent from his prison trust account to his mother. Plaintiff gave the reason for the disbursement as "[g]ift to family/mother on waiting list." Defendant reviewed plaintiff's disbursement request and discovered that plaintiff had sent his mother a large sum of money in the recent past. On May 25, 2011, defendant denied plaintiff's May 17 disbursement request, saying

on the disbursement form that he had done so because "[plaintiff] has sent over $1,500 to mother in less than a year— last disbursement sent on 4/20/11 for $500. Mother's Bday has or is not for a couple months."

Under the applicable prison policy, Columbia Correctional Institution's Business Office Policy-Red Book, defendant did not have the authority to unilaterally deny plaintiff's disbursement request. For disbursement requests exceeding $100 for close family members, an inmate must obtain recommendations from his social worker, parole agent and unit manager. Unit managers have the authority to request additional information to substantiate a request. After reviewing each recommendation and all the supporting documents, the warden makes the final decision to approve or deny the disbursement request.

On June 1, 2012, Columbia Correctional Institution Warden Michael Meisner received a letter from plaintiff stating that defendant had retaliated against him by refusing to allow plaintiff to send money to his mother for food. The warden responded to plaintiff's letter on June 2, 2012, stating, "I concur with [defendant's] decision to deny your request." The warden noted that plaintiff had said in his disbursement request that the money was a gift to his mother, but said in his letter that his mother needed the money for food. Moreover, the warden stated that plaintiff had not obtained recommendations from his parole agent and social worker, in violation of prison policy. The warden stated that plaintiff had to follow this policy to obtain approval of future requests.

Plaintiff filed a lawsuit against defendant and 26 other individuals on April 22, 2009.

Gillis v. Grams, 09-cv-245. Plaintiff alleged that defendant violated his due process rights and retaliated against him by filing a false conduct reporting pertaining to plaintiff. On March 14, 2011, this court granted summary judgment to defendant and all other remaining defendants in that case.

B. Opinion

Under Fed. R. Civ. P. 56, summary judgment is appropriate "when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." Goldstein v. Fidelity & Guaranty Ins. Underwriters, Inc., 86 F.3d 749, 750 (7th Cir. 1996) (citing Fed. R. Civ. P. 56); see also Celotex v. Catrett, 477 U.S. 317, 323 (1986). All reasonable inferences from undisputed facts should be drawn in favor of the nonmoving party. Baron v. City of Highland Park, 195 F.3d 333, 338 (7th Cir. 1999); see also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). However, the nonmoving party cannot simply rest upon the pleadings once the moving party has made a properly supported motion for summary judgment; instead, the nonmoving party must "set out specific facts showing a genuine issue for trial." Fed. R. Civ. P. 56(e)(2). "A genuine issue of material fact arises only if sufficient evidence favoring the nonmoving party exists to permit a jury to return a verdict for that party." Brummett v. Sinclar Broadcast Group, Inc., 41 F.3d 686, 692 (7th Cir. 2005). If the nonmoving party fails to establish the existence of an essential element on which that party will bear the burden of proof at trial, summary judgment for the moving party is proper. Celotex, 477 U.S. at 322.

"An act taken in retaliation for the exercise of a constitutionally protected right violates the Constitution." DeWalt v. Carter, 224 F.3d 607, 618 (7th Cir. 2000). Plaintiff must plead three elements in order to state a claim for retaliation. He must (1) identify a constitutionally protected activity in which he was engaged; (2) identify one or more retaliatory actions taken by each defendant that would deter a person of "ordinary firmness" from engaging in the protected activity in the future; and (3) allege sufficient facts that would make it plausible to infer that plaintiff's protected activity was one of the reasons defendant took the action they did against him. Bridges v. Gilbert, 557 F.3d 541, 556 (7th Cir. 2009) (citing Woodruff v. Mason, 542 F.3d 545, 551 (7th Cir. 2008)); Hoskins v. Lenear, 395 F.3d 372, 375 (7th Cir. 2005). If the inmate meets all three elements, the burden then shifts to the defendants to show that the defendants would have taken the same actions "even in the absence of protected conduct." Greene v. Doruff, 660 F.3d 975, 979 (7th Cir. 2011). That is, the defendants are not liable for a retaliation claim if they can show that the alleged retaliatory act "would have occurred anyway." Id. at 980.

Filing a lawsuit is a constitutionally protected activity. With regard to the second element necessary to state a retaliation claim, the relevant inquiry is whether plaintiff's alleged injury was "so trivial that a person of ordinary firmness would not be deterred from" exercising his constitutional rights. Pieczynski v. Duffy, 875 F.2d 1331, 1333 (7th Cir. 1989). "[T]hreats or other intimidation by prison officials may well deter a prisoner of 'ordinary firmness.'" Kaba v. Stepp, 458 F.3d 678, 686 (7th Cir. 2006) (quoting Hemphill v. New York, 380 F.3d 680, 688 (2d Cir. 2004)). For instance, the placement of an inmate

in disciplinary segregation for 45 days is also sufficient to deter a person of "ordinary firmness" from engaging in a protected activity. Jackson v. Thurmer, 748 F. Supp. 2d 990, 1003-04 (W.D. Wis. 2010). In contrast, it is questionable whether the denial of one disbursement request for $300 after plaintiff had already sent more than $1,500 to his mother during the past year would deter a person of "ordinary firmness" from filing a lawsuit in the future.

Moreover, plaintiff's proof of retaliatory intent is extremely thin. Plaintiff points to two facts in support of his argument that defendant retaliated against him: (1) plaintiff previously filed a lawsuit against defendant; and (2) defendant failed to follow prison policy when he denied plaintiff's disbursement request. It is true that plaintiff previously sued defendant, he has not demonstrated any particularly plausible connection between that lawsuit and defendant's actions in this lawsuit. In and of itself, suspicious timing rarely suffices to show that a plaintiff's complaint caused the adverse action against the plaintiff. Kidwell v. Eisenhauer, 679 F.3d 957, 966; Coleman v. Donahoe, 667 F.3d 835, 860 (7th Cir. 2012). In this case, defendant allegedly retaliated against plaintiff over two years after plaintiff filed the lawsuit against defendant and two months after this court granted defendant summary judgment. Similarly, it is difficult to conclude that retaliatory intent can be inferred by defendant's violation of prison policy in denying the request outright (rather than just recommending denial). Although defendant did not have the authority to deny the request himself, but it appears that he interpreted the substantive aspects of the policy correctly.

In any case, even assuming that plaintiff had carried his burden and demonstrated that defendant meant to retaliate against him, plaintiff's claim still fails because defendant has shown that plaintiff's disbursement request would have been denied absent any retaliatory motive. A defendant can rebut a plaintiff's prima facie case of retaliation by showing that "the harm would have occurred anyway." Greene, 660 F.3d at 980. Prison policy stated that only the warden could grant final approval or denial of a prisoner's disbursement request. When plaintiff wrote the warden to report defendant's alleged retaliation, the warden responded that "I concur with [defendant's] decision to deny your request." Dkt. #53, ¶ 32. The warden explained that plaintiff had failed to obtain recommendations from his social worker and parole agent. He pointed out that plaintiff had indicated on his disbursement that the money was a "gift," but later stated in his letter that his mother needed the money for food. Finally, he said that if plaintiff wanted to make disbursement requests in the future, he would have to obtain the required recommendations along with supporting documents explaining why he needed to send the money. Because the rules authorized the warden to make all final decisions regarding disbursement requests and because the warden denied plaintiff's request for his failure to follow prison policy, defendant has met his burden of showing that plaintiff's disbursement request would have been denied regardless of any retaliatory motive on the part of defendant. Consequently, plaintiff's retaliation claim fails. I will grant defendant's motion for summary judgment because there are no genuine issues of material fact and defendant is entitled to judgment as a matter of law.

MOTION FOR PRELIMINARY INJUNCTION

Plaintiff also filed a motion for preliminary injunction, dkt. #63, in which he asks the court to order the Waupun Correctional Institution to allow him to send his mother $200 for food. As an initial matter, because I am granting defendant's motion for summary judgment, plaintiff's motion is moot. Even if it were not, it does not relate to plaintiff's retaliation claim against defendant Ashworth that is at issue in this lawsuit. If plaintiff believes that Brian Graff and William Pollard are improperly denying him the ability to send his mother money from the Waupun Correctional Institution, he will have to file a new lawsuit naming them as defendants. I will deny plaintiff's motion for preliminary injunction.

ORDER

IT IS ORDERED that

1. Defendant Anthony A. Ashworth's motion for summary judgment, dkt. #47, is GRANTED.

2. Plaintiff Nathan Gillis's motion for a preliminary injunction, dkt. #63, is DENIED.

3. The clerk of court is directed to enter judgment for defendant and close this case.

Entered this 11th day of December, 2012.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge